FILED

IN THE CIRCUIT COURT OF MARSHALL COUNTY, WEST VIRGINIA

2017 MAY 15 AM 9: 18

JOSEPH M. RUCKI

MARK H. FRYE and
LISA FONNER,

Plaintiffs,

v. CIVIL ACTION NO. 17-C-102 C

THE MARSHALL COUNTY COAL COMPANY, a Delaware Corporation and the McELROY COAL COMPANY, a Delaware Corporation,

Defendants.

COMPLAINT

Now come your Plaintiffs, Mark H. Frye and Lisa Fonner, by and through their counsel, Eric M. Gordon, of Berry, Kessler, Crutchfield, Taylor & Gordon, and complains and avers, as follows:

COUNT I

1. Plaintiff, Mark H. Frye, has been at all relevant times the owner of property situate at 169 Frye's Lane, Cameron, Marshall County, West Virginia. Said property is more particularly described as 1.2203 acres, more or less, and shown on Tax Map 18, as Parcel No. 27.1, in Cameron District, Marshall County, West Virginia, and which property is more particularly described in the deed from Mark H. Frye and Judy E. Frye to Mark H. Frye, dated August 7, 2007 and of record in the Marshall County Clerk's Office in Deed Book 662, at page 127.

2. Plaintiff, Mark H. Frye, is also the owner of property adjacent to the above property located in Marshall County, West Virginia. Said property is taxed as containing 93.8827 acres, more or less, and is shown on Tax Map 18, as Parcel No. 27, in Cameron District, on Tax Map 17, as Parcel 1, in Cameron District, and on Tax Map 1, Parcels 137, 155, and 156

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EXHIBIT A

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in Cameron Corporate District, Marshall County, West Virginia, and is described in a Deed dated March 13, 2017, in Deed Book 919, at page 535. Prior to acquiring this property from his mother, Shirley A. Frye, the plaintiff built a barn on the property and pastured cattle and horses on said property. In purchasing this property, the Plaintiff also acquired the right to use a spring and reservoir situate upon an adjoining parcel.

3. At all times relevant, Plaintiff Lisa Fonner has lived and worked on the properties with Plaintiff Mark H. Frye.

4. The Defendant, The Marshall County Coal Company, is a Delaware corporation licensed to do business in the State of West Virginia, with a local office address of Cameron Portal, 57 Goshorn Woods Road, Cameron, West Virginia, 26033.

5. The Defendant, McElroy Coal Company, is a Delaware corporation licensed to do business in the State of West Virginia, with a local office address of 46226 National Road, St. Clairsville, Ohio, 43950.

6. The Defendants, one or both of them, did, beginning in or about the Fall of 2014, and continuing through June of 2015, conduct long-wall mining and oil and gas well plugging operations, under and adjacent to the above described properties now owned by the Plaintiff. During and subsequent to mining the Plaintiffs have noticed and continue to notice damages to both properties and the structures thereon and the natural water supplies..

7. As a direct and proximate result of the long-wall mining operations conducted by one or both of the Defendants, the Plaintiffs suffered damages, all of which are continuing in nature, including, but not limited to, the following:

a. Damage to the residence, barn, and other outbuildings on the property;

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b. a loss of natural water sources situate on or servicing the properties;

c. a diminution of the total value of the properties;

d. loss of use of the properties and/or structures situate thereupon;

e. annoyance and inconvenience; and

f. a functional impairment of the surface lands including physical changes having a significant impact on his lands current or reasonably foreseeable uses.

8. To date, the Defendants have failed to correct the damages or adequately compensate the Plaintiffs for the same.

9. As a direct and proximate result of mining operations the septic system in Plaintiffs' residence was damaged or disrupted on two (2) separate occasions.

10. As a direct and proximate result of this damage and/or disruptions, gray water/septic water would back into and under the basement floor of the residence.

11. In 2016 Defendant retained a contractor to work on the septic system. They failed to properly fix the problem leaving gray water/septic water lying in and under the basement.

12. As a direct and proximate result of the back-up of gray water/septic water in the basement of the residence, Lisa Fonner suffers from Klebsiella Pneumoniae. She has endured pain and suffering and has been forced to incur medical bills.

COUNT II

13. Plaintiffs replead each and every allegation contained within Count I of this Complaint as if fully set forth herein.

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14. The Defendants owe a duty to the Plaintiffs pursuant to the permit issued them, their own subsidence control plan, and, as well, the Surface Coal Mining and Reclamation Control Act and the regulations promulgated thereto, to among other things, maintain the value and reasonably foreseeable use of the overlying surface lands; to correct any material damage to surface land, the facilities or structures located thereon or to compensate the owners for said damage; to replace the loss of natural water on the property by supplying water of equal quantity and quality; and to take all reasonable measures to present subsidence related damage to Plaintiff's property and structures.

15. The Defendants have violated the terms of the mining permit granted them by the State of West Virginia and, specifically, the Subsidence Control Plan they prepared as a part of the permit and the violations continue to this day.

16. The Defendants have violated the Surface Coal Mining and Reclamation Control Act and the regulations promulgated pursuant to said Act and the violations continue to this day.

17. The Defendants have violated all of the same by failing to provide for adequate maintenance, replacement, repair, or compensation to the Plaintiffs for the damages they have suffered and by failing to take measures prior to mining to prevent subsidence on the property.

COUNT III

18. Plaintiffs replead each and every allegation contained within Count I and II of this Complaint as if fully set forth herein.

19. The Defendants' actions were willful, wanton, intentional, reckless, and malicious demonstrating criminal indifference to the obligations they owed to the Plaintiffs.

20. The Defendants' intentional disregard of laws designed to protect the interests of the public entitles the Plaintiffs to punitive damages.

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WHEREFORE, your Plaintiffs demand judgment against the Defendants in an amount sufficient to compensate them for their damages, punitive damages, pre-judgment and post-judgment interest; expert fees, attorney's fees and costs and such other further relief as the Court deems proper.

PLAINTIFF DEMANDS A TRIAL BY JURY.

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